

APPEAL NO. 050442
FILED APRIL 12, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 18, 2005. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include carpal tunnel syndrome or cubital tunnel syndrome on either side and does not include cervical intervertebral disc syndrome or radiculopathy, and that the claimant did not have disability resulting from the compensable injury sustained on _____. The claimant appealed the hearing officer's extent-of-injury and disability determinations based on sufficiency of the evidence grounds. Additionally, the claimant asserts that the appeal is timely given that his attorney did not receive a copy of the decision and order until February 9, 2005, because the Texas Workers' Compensation Commission (Commission) mailed the decision and order to the attorney at a wrong address. The respondent (carrier) responded that the claimant's time to appeal should not be extended because the claimant's attorney received the decision and order at a later time, and that the hearing officer's decision should be affirmed.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.5(a)) provides in part that after the Commission is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant shall thereafter be sent to the representative as well as the claimant, unless the claimant requests delivery to the representative only. However, copies of settlements, notices setting benefit review conferences and hearings, and orders of the Commission shall always be sent to the claimant regardless of representation status.

In the instant case, while the claimant asserts that his attorney did not receive a copy of the hearing officer's decision and order until February 9, 2005, because it was mailed to a wrong address, the file does not contain evidence that the claimant himself did not receive his copy of the decision and order 5 days after the date mailed to the parties pursuant to Rule 102.5(d). The Appeals Panel has held that since the 1989 Act gives the party, not the attorney, the right to appeal, and provides the party, not the

attorney, with 15 days in which to file an appeal, the operative date for determining the timeliness of the appeal is the date the claimant, not his or her attorney, received the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992; Texas Workers' Compensation Commission Appeal No. 941144, decided October 4, 1994. While Rule 102.5(a) does provide that written communications to the claimant shall be sent to the representative, this has been interpreted to be a courtesy copy as provided for in Commission Advisory 93-11, signed November 4, 1993, and does not operate to extend or change the 15 days after receipt of the hearing officer's decision by the party. Texas Workers' Compensation Commission Appeal No. 011059, decided June 26, 2001.

Commission Advisory 93-11, provides in part that:

All documents and notices related to workers' compensation dispute resolution proceedings that are required to be provided by the [Commission] to claimants will continue to be mailed to the Claimant. Notice to the Claimant for all purposes will be established by this notification. If the Claimant is represented by an attorney before the Commission, and the Commission has the address of such attorney in its files, *then a courtesy copy of all such documents will be mailed such attorney.* [Emphasis added.]

Commission records indicate that the hearing officer's decision was mailed to the claimant on January 24, 2005. Pursuant to Rule 102.5(d) and Rule 143.3(d)(1), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision on January 29, 2005, which was 5 days after the date it was mailed to him. We will not consider the claimant's attorney's explanation that he did not receive a copy of the decision and order until February 9, 2005. With the deemed date of receipt of January 29, 2005, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than February 18, 2005. The claimant sent his appeal both by facsimile transmission (fax) on February 25, 2005, and received by the Commission that same date, and by U.S. mail, posted-marked February 25, 2005, and received by the Commission on March 2, 2005. Since the claimant's appeal was neither faxed nor mailed on or before February 18, 2005, the claimant's appeal was not timely filed.

Having determined that the hearing officer's decision and order have become final under Section 410.169 because a timely appeal was not filed with the Commission, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge